

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1783 OF 1984

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

R.P.MISTRY.

VERSUS

REGISTRAR, GUJARAT HIGH COURT & ORS.

Appearance:

MR. DV MEHTA for the Petitioner

MR. MUKESH PATEL for the Respondent

Coram: S.K. Keshote, J

Date of decision: 21/01/1997

C.A.V. JUDGMENT

Heard learned counsel for the parties and perused the Special Civil Application.

2. The petitioner was appointed as Section Writer in

this Court on 20th March 1962. He was promoted to the post of Assistant on 4.11.71, on which post he was confirmed in 1972. He came to be promoted on the post of Section Officer on 19th April 1980. Shri R.R. Shah, and Shri D.M. Talwari were senior to the petitioner in the cadre of Assistant. Shri R.R. Shah was promoted to the post of Assistant on 18.11.69 and Shri D.M. Talwari on 1.7.71, though both of them have been confirmed on the said post on 1.3.72 like the petitioner. These facts are borne out from the writ petition itself. Shri R.R. Shah and Shri D.M. Talwari were promoted to the post of Section Officer on 20th September 1982 and 5th January 1982, i.e. later in point of time than the petitioner. Though these two persons were senior to the petitioner in the cadre of Assistants, but by virtue of promotion later in point of time on the post of Section Officer, they have been placed junior to the petitioner in that cadre on which there is no dispute. However, the petitioner's grievance is that though those two persons are junior to him in the cadre of Section Officer, they are getting more pay on promotion than him and as such, the respondent should have stepped up his pay by bringing the same at the level of the pay of Shri R.R. Shah, junior person.

3. I do not find any substance in this grievance of the petitioner. A reference may have to the Resolution dated 8th May 1970 (Annexure 'B' to this Special Civil Application) which provides for stepping up of salary of the senior government servants, making it equal to one who is junior. Stepping up in the salary as per the aforesaid Resolution is permissible in case conditions as laid down thereunder are fulfilled. These conditions are as under:

- i) both the Government servants should belong to same cadre and are promoted to the identical cadre.
- ii) time scales of both lower and higher cadre must be entitled.
- iii) but for the promotion to the higher cadre earlier, the Government servant should have been eligible to draw pay in the lower cadre at a stage not lower than that admissible to the Junior person immediately prior to latter's promotion to higher post.
- iv) anomaly is directly attributable to the provision of Government Resolution F.D. No.1264/463/CH dated 5-1-1965.

4. It is not in dispute that on promotion the pay of an employee on the promoted post has to be fixed in

accordance with Rule 41A of the Bombay Civil Services Rules (B.C.S.R.). It is also not in dispute that the post of Section Officer is purely a selection post and it is to be filled in on selection from the cadre of Assistants. The Resolution of the Government dated 5th January 1965 has also not been in dispute. The Government Resolution dated 8.5.70 has been made applicable by the Government vide its Resolution dated 3rd July 1982. On promotion, as per the Resolution dated 5th January 1965, which now has been incorporated in Rule 41A of the B.C.S.R., one increment in substantive cadre has to be given and thereafter the pay has to be fixed in the pay scale on promotion at a next higher stage. It is also not in dispute that the promotion to the post of Section Officer was promotion to the higher post carrying higher responsibilities. In the year 1980 when the petitioner was promoted, on selection, to the post of Section Officer, his basic pay in the cadre of Assistant was Rs.635/- whereas the basic pay of Shri R.R.Shah and Shri D.M. Talwari was Rs.675/- and Rs.655/- p.m. respectively. The pay scale for the post of Section Officer at the relevant time started from minimum thereof Rs.650/- p.m. On promotion of the petitioner, his pay as per Rule 41A of B.C.S.R. has been fixed at Rs.680/- p.m. In the year 1982, when Shri Talwari was promoted to the cadre of Section Officer, his salary in the cadre of Assistant was Rs.700/- p.m. and on promotion his salary was fixed at Rs.740/- under Rule 41A of B.C.S.R. At that time, the petitioner was drawing the basic salary of Rs.740/- p.m. in the cadre of Section Officer. In the month of September 1982, Shri R.R. Shah was promoted and his salary was fixed at Rs.775/- p.m. under Rule 41A of B.C.S.R. with reference to his basic salary of Rs.725/-, which he was drawing in the cadre of Assistant. So, Shri R.R.Shah who was senior to the petitioner and Shri Talwari in the cadre of Assistant, but promoted subsequent to them in the cadre of Section Officer, got more pay only for the reason that he was drawing much higher pay than those persons in the earlier cadre of Assistant. This anomaly has arisen because of implementation of the provisions of Rule 41A of the B.C.S.R. The petitioner's pay on promotion has also been fixed under Rule 41A aforesaid at the relevant time. The Resolution dated 8.5.70 provides one of the conditions that as for promotion to higher post earlier, the Government servant concerned would have been eligible to draw pay in the lower post at a stage not lower than that admissible to the junior person immediately prior to the latter's promotion to the higher post. That is not the case here. The petitioner would have been entitled for stepping up of his pay in case it is established that on the date on which Shri R.R.Shah was

promoted to the post of Section Officer, he was eligible to draw pay in the cadre of Section Officer at his stage not lower than admissible to Shri R.R. Shah. That case, the petitioner is unable to make out. It is a case where the claim of the petitioner for stepping up of his pay to bring it equal to the pay of Shri R.R. Shah which has been fixed on his promotion is not tenable.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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(sunil)